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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,163	07/17/2003	Khalid Iqbal	MERZ 35	2196
25666 7590 11/15/2007 THE FIRM OF HUESCHEN AND SAGE SEVENTH FLOOR, KALAMAZOO BUILDING 107 WEST MICHIGAN AVENUE KALAMAZOO, MI 49007			EXAMINER CHONG, YONG SOO	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Status of the Application

This Office Action is in response to applicant's arguments filed on 9/6/2007. Claim(s) 2-3, 6-9, 11-12, 14-16 have been cancelled. Claim(s) 1, 4-5, 10, 13 are pending. Claim(s) 1, 4-5, 10, 13 have been amended. Claim(s) 1, 4-5, 10, 13 are examined herein.

Applicant's amendments have rendered all objections, 112 rejections, and 102(b) rejection of the last Office Action moot, therefore hereby withdrawn. The following new rejection will now apply.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim(s) 1, 4-5, 10, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Shapiro (US Patent 5,668,117).

Shapiro discloses treating neurological diseases, characterized by covalent bond crosslinking between the nerve cells, other cellular structures and their intracellular and extracellular components, with disease induced carbonyl containing aliphatic or aromatic hydrocarbons present in mammals (abstract), such as Pick's disease (col. 9,

lines 37-52), with a composition comprising memantine at a dosage of 10 to 400 mg daily (example 1).

Examiner notes that the limitations regarding the symptoms and etiology are considered preamble and will be given little patentable weight. Furthermore, the mechanism of action of the instant claims (inhibition of abnormal hyperphosphorylation of microtubule protein tau) is inherent when the patient population, active agent, and the dosage are the same.

Applicant's arguments herein are related to the mechanism of action of an agent in the treatment. Note that the mechanism of action of an agent in the treatment, by itself, does not have a bearing on the patentability of the invention if the method steps are already known even though applicant has proposed or claimed the mechanism. Applicant's recitation of a new mechanism of action for the prior art method *will not, by itself, distinguish* the instant claims over the prior art teaching the same or nearly the same method steps.

It is well known in Patent Law that if applicants are claiming a biological pathway as the basis for their invention then a mechanism by which the active ingredient gives the pharmacological effect does not alter the fact that the compound has been previously used to obtain the same pharmacological effects which would result from the claimed method. The patient, condition to be treated, and the effect are the same. An explanation of why that effect occurs does not make novel or even unobvious the treatment of the conditions encompasses by the claims.

"Products of identical chemical composition can not have mutual exclusive properties." Any properties exhibited by or benefits from are not given any patentable weight over the prior art provided the composition is inherent. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the disclosed properties are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01. The burden is shifted to the applicant to show that the prior art product does not inherently possess the same properties as the instantly claimed product.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

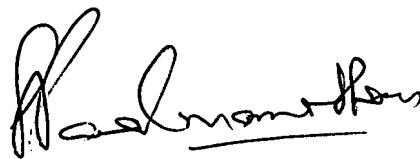
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong S. Chong whose telephone number is (571)-272-8513. The examiner can normally be reached on M-F, 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SREENI PADMANABHAN can be reached on (571)-272-0629. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YSC



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SUPERVISORY PATENT EXAMINER